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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Serial No. 09/524,804
Filing Date March 14, 2000
Inventor Mark E. Tuttle
Assignee Micron Technology, Inc.
Group Art Unit 2635
Examiner M. Shimzu
Attorney's Docket No. MI40-285
Title: Wireless Communication Devices, Radio Frequency Identification Devices, Methods
of Forming a Wireless Communication Device, and Methods of Forming a Radio
Frequency Identification Device

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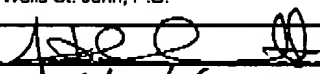
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	Filing Date	March 14, 2000
	First Named Inventor	Mark E. Tuttle
	Art Unit	2635
	Examiner Name	M. Shimzu
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Firm or Individual	James D. Shaurette, Reg. No. 39,833 Wells St. John, P.S.	
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REPLY BRIEF

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Sir:

For at least the reasons presented in the Brief of Appellant and the arguments provided below, Appellants respectfully request reversal of the rejections of the claims and allowance of all pending claims.

A. The 103 Rejection of Claims 50-52, 54-58, 62-69, 71-75, 79-98, and 101-106 Over Walton and Drabeck.

Appellants again assert for the reasons set forth in the Brief of Appellants ("Brief") that the Office has failed to meet their burden of establishing proper motivation to combine the teachings of Drabeck and Walton and the Office has failed to establish a proper *prima facie* 103 rejection for at least this reason. Appellants respectfully submit that the Examiner's Answer is also deficient with respect to establishing proper motivation for a 103 rejection.

At page 15 of the Examiner's Answer, the Examiner states that Drabeck teaches microwave communications and backscattering communication and Walton teaches a radio frequency identification device. Even if the respective references disclose microwave communications and backscatter communications, and radio frequency communication, respectively, Appellant respectfully submits that such teachings are insufficient to establish motivation to combine the reference teachings in view of MPEP §2143.01III (8th ed., rev. 3) citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) providing the mere fact that references *can* be combined or modified does not render the resultant combination obvious *unless the prior art also suggests the desirability of the combination*. The Examiner has identified no suggestion of the desirability of the combination and Appellants respectfully submit the Examiner has failed to meet the Office's burden of establishing proper motivation. Appellant respectfully submits the 103 rejection falls short of the authority of the examiner bearing the initial burden of factually supporting any *prima facie* conclusion of obviousness, that is, the initial burden is on the examiner to

provide some suggestion of the desirability of doing what the inventor has done.

MPEP §2142 (8th ed., rev. 3).

The failure of the Office to establish evidence in the Examiner's Answer of proper motivation to combine the references as well as the failure of the Office to support the allegations in the Office Action mailed July 11, 2005 ("Office Action" or "Action") and as repeated at page 5 of the Examiner's Answer that improvements would result from the combination of reference teachings illustrate the erroneous nature of the 103 rejection. There is no evidence that any improvement or "efficient communication" results from the combination as baldly alleged on page 5 of the Examiner's Answer and as set forth at page 11 of the Brief. Furthermore, Appellants refer again to the Brief at page 13 and submit the Office has not demonstrated that the disparate *microwave* teachings of Drabek may even be successfully combined with the *magnetic inductive coupling* teachings of Walton in any arrangement, let alone one which has sufficient improvement to motivate one to combine the two references.

At page 15 of the Examiner's Answer and with respect to the statement of the Office that Appellant's invention is not directed to use of microwave RF communications, Appellants refer the Office to page 5, lines 23+ of the originally filed specification disclosing microwave communications in at least one embodiment. In addition, 35 U.S.C. §112, second paragraph, requires that the claims particularly point out and distinctly claim the subject matter that the patent applicant regards as his or her invention. At least some of the claims (e.g., claim 50) explicitly claim microwave communications and accordingly at least some embodiments of Appellant's disclosure are directed towards use of microwave

communications in accordance with Appellant's right to define the claims using limitations as they regard as their invention. Appellant also submits the statement on page 15 of the Examiner's Answer that microwave communication is "merely an extension" of what Appellant indicates as a preferred embodiment is erroneous and not supported by any statement of Appellant. To the contrary, the recitation of microwave signals defines limitations in a combination which has not been demonstrated to be obvious. Regardless, the Examiner may not properly rely upon Appellant's teachings in view of authority which provides the motivation for forming the combination must be something other than hindsight reconstruction based on using Applicant's invention as a road map for such a combination. See, e.g., *In re Mills*, 16 USPQ2d 1430 (Fed. Cir. 1990).

Appellants also respectfully submit that the housing 610 associated with identifier section 210 of Walton identified on page 15 of the Examiner's Answer fails to provide motivation to combine the reference teachings.

Finally, at page 15 of the Examiner's Answer, the mere disclosure of microwave communications in Drabeck fails to provide proper motivation to combine the prior art references in view of the authority recited in the Brief regarding the desirability of the combination.

Appellant respectfully submits the Office has failed to establish proper motivation to combine the reference teachings and Appellants request withdrawal of the 103 rejection and allowance of the claims for the reasons herein as well as the reasons in the Brief of Appellants.

B. The 103 Rejection of Claims 65, 84, 86, 88, 90, 92, 94, 96, and 98 Over Walton, Drabeck and Brady.

The Office relies upon the teachings of Walton at col. 1, lines 23-25 as disclosing a battery in support of the rejection. However, the teachings of col. 1 referring to a battery refer to prior art identifying devices void of the remaining limitations of Appellant's claims. More specifically, the Office has failed to demonstrate that the prior art teachings of the battery are usable with the constructions to which Walton is directed as described in the detailed description of Walton which are relied upon as disclosing limitations of Appellant's claims. Appellant respectfully submits the teachings of unrelated devices of prior art constructions of Walton have not been demonstrated to be applicable to the inventive constructions of Walton in the detailed description thereof and which are void of battery powered teachings.

Appellant respectfully submits the Office has failed to establish proper motivation to combine the reference teachings and Appellants request withdrawal of the 103 rejection and allowance of the claims for the reasons herein as well as the reasons in the Brief of Appellants.

C. The 103 Rejection of Claims 54-58, 65, 71-75, 80-81, 85-86, 93-94, and 103-106 Over Walton and Drabeck.

The Office states on page 16 of the Examiner's Answer that Walton fails to disclose a substrate. The Office apparently relies upon inherency by stating that "it is implied a substrate would be used in Walton." However, Applicants assert that the reliance upon

inherency is misplaced in view of authority which provides that the Office *must* provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied prior art. *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). MPEP 2112 IV (8th ed., rev. 3). At page 16 of the Examiner's Answer, the Office states the circuitry 212 must be supported somehow and this is typically done via a substrate (emphasis added). Appellant respectfully submits the statements illustrate the improper reliance upon inherency. More specifically, the above-recited authority requires a basis in fact or technical reasoning that the allegedly inherent characteristics necessarily flow from the teachings of the prior art. Accordingly, what may or may not be "typical" is insufficient for proper reliance upon inherency. In addition, other alternative exists for fabricating the circuitry (e.g., supporting the circuitry using the encapsulant of Walton without usage of a substrate per the Walton teachings) and the reliance upon inherency is improper in view of existing suitable alternatives.

Appellant respectfully submits the Office has failed to establish proper motivation to combine the reference teachings and Appellants request withdrawal of the 103 rejection and allowance of the claims for the reasons herein as well as the reasons in the Brief of Appellants.

D. The rejection of claims 102-106 Over Walton, Drapeck and Sawada.

Appellants respectfully submit the Office has failed to meet their burden of establishing proper motivation to combine the references in support of a proper *prima facie*

103 rejection. Initially, the alleged motivation of the Office in the Office Action "for the purpose of providing a ruggedized device" is not supported by objective evidence of record. Appellants respectfully submit the Examiner's Answer fails to cure the deficiencies of rejection with respect to proper motivation.

At page 16 of the Examiner's Answer, it is stated that Walton and Drabeck (even if combined) fail to indicate what material they are made of. Thereafter, the Examiner states that "[w]ithout knowledge of what the materials of an encapsulant and a substrate should be, one must look else-where." However, the Office fails to identify any objective evidence to support motivation for one to look to teaching of a substrate and encapsulant comprising different materials as claimed. Appellant respectfully submits the Office has improperly relied upon Appellant's teachings in combining the references in the absence of any objective reasoning or rationale in the prior art. In "looking else-where" the Office has provided no objective evidence of a desirability existing in the prior art for one to go in the direction claimed by Appellant in the respective claims where the substrate and encapsulant are different materials.

The Examiner baldly states that Sawada is one place to find out what materials are desired. Appellant respectfully disagrees inasmuch as Sawada is directed towards encapsulation of a semiconductor component such as a semiconductor die and is not directed to wireless communications. Appellant submits that one of skill in the art concerned with issues regarding providing a device capable of implementing wireless communications would not look to semiconductor device art which is not concerned with wireless communications for meaningful teachings. Semiconductor device fabrication art has not been demonstrated to be concerned with impacts of the structure with respect to

the ability to receive or transmit wireless communications. There is no objective evidence to look to Sawada for meaningful teachings and Appellant respectfully submit one of skill in the art working with wireless communication devices would not be motivated to look to prior art not concerned with wireless communications and which may adversely impact such. In the absence of any suggestion to combine the references proposed by the Office, the only suggestion results from improper reliance upon the teachings of Appellant's disclosure. Also, Appellants state that the Office has provided no evidence of the desirability to combine the teachings of Sawada or any other prior art.

Finally, the Office states on page 16 of the Examiner's Answer that clearly a substrate needs to remain rigid where as encapsulant needs to be formed around it and this would imply the materials need to be different. Once again, the Office appears to rely upon inherency in support of the rejection. Appellant respectfully submits that a mold could be used as an alternative of a rigid support and the presence of a suitable alternative to Appellant's claims illustrates the inappropriateness of any reliance upon inherency. Also, the Examiner has provided no explanation as to why, even if a substrate "needs to remain rigid" as baldly alleged by the Office, that a rigid substrate could not be used of the same material as the encapsulant. Appellant submits there is insufficient objective evidence of motivation to combine the numerous reference teachings for at least these reasons.

Appellant respectfully submits the Office has failed to establish proper motivation to combine the reference teachings and Appellants request withdrawal of the 103 rejection and allowance of the claims for the reasons herein as well as the reasons in the Brief of Appellants.

E. The 103 Rejection of Claims 83, 85, 87, 89, 91, 93, 95, 97, 99, and 100 Over MacLellan and Walton.

At page 16 of the Examiner's Answer, the Examiner merely restates that MacLellan discloses communication circuitry is configured to implement backscatter communications and both Walton and MacLellan teach transponder system. Appellants respectfully submits that such teachings are insufficient to establish motivation to combine the reference teachings in view of MPEP §2143.01III (8th ed., rev. 3) *citing In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) providing the mere fact that references *can be* combined or modified does not render the resultant combination obvious *unless the prior art also suggests the desirability of the combination*. Appellants respectfully submit the Examiner has failed to provide some suggestion of the desirability of doing what the inventor has done. MPEP §2142 (8th ed., rev. 3).

Also, at page 17 of the Examiner's Answer, it is stated that the examiner is not saying to use backscatter in inductive coupled system. However, Walton discloses an inductively coupled system as set forth in Appellant's Brief. In view of MPEP 2141.02VI (8th ed., rev. 3) *prior art references must be considered in their entireties including disclosures that teach away from the claims*. Accordingly, the combination proposed by the Office combines backscatter teachings of MacLellan with the inductively coupled system of Walton when the references are properly considered in their entireties. There is no evidence of record that backscatter of MacLellan may be properly combined with the inductively coupled system of Walton at all let alone in an improved system to motivate one to combine the reference teachings. Appellant respectfully submits the Office has

improperly parsed the teachings of the prior art to arrive at the 103 rejection and Appellants respectfully submit there is no objective evidence of record of proper motivation to combine the references when the teachings of the references are properly considered in their entireties.

Appellant also respectfully submits that adding backscatter to Walton changes the principle of operation of the inductively coupled arrangement of Walton. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. MPEP §2143.01VI. (8th ed , rev. 3) citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Finally, a proper *prima facie* 103 rejection requires a reasonable expectation of success and the Office has failed to provide any evidence that the disparate teachings of the references may be combined with a reasonable expectation of success.

Appellant respectfully submits the Office has failed to establish a proper *prima facie* 103 rejection for these reasons and Appellant requests withdrawal of the 103 rejection and allowance of the claims for the reasons herein as well as the reasons in the Brief of Appellants.

F. The 103 Rejection of claim 101 Over Walton and Drabeck.

Appellant respectfully submits the Examiner has improperly maintained that claim 101 does not cite two dedicated antennae as set forth on page 17 of the Examiner's Answer. The clear read of claim 101 recites plural antennae including *a transmit antenna*

configured to transmit microwave signals and a *receive antenna* configured to receive microwave signals. Claim 101 uses proper antecedent basis for both the separate structures of the transmit antenna and receive antenna. Furthermore, the specification at page 7, lines 11+ discloses one embodiment of a conductive trace 30 provides antenna 32 suitable for receiving and antenna 34 suitable for transmitting electronic signals or RF energy. The Office has failed to identify any evidence of record or identify any teaching in Appellant's disclosure as to why the explicitly claimed transmit antenna and receive antenna are not to be considered as two antennae and are to be interpreted contrary to the clear recitation of the claims.

Even if the teachings of the prior art references are combined, the combination including the single antenna 102 of Drabeck fails to teach the claimed receive antenna and transmit antenna of claim 101. The Office has failed to establish a proper *prima facie* rejection for at least this reason.

Appellant respectfully traverses, pursuant to MPEP 2144.03A any reliance upon judicial notice by the Office in support of the rejection. Appellants respectfully disagree that it is known to use either a single antenna or two separate antennas for a transmitter and receiver in combination with the other limitations of the claims. MPEP 2144.03A (8th ed., rev. 3) provides that *official notice unsupported by documentary evidence should only be taken by the examiner when the facts asserted to be well known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known*. It is **not appropriate** for the Office to take official notice of facts without a reference where the facts asserted to be well known are not capable of instant and

unquestionable demonstration as being well-known. The Examiner is reminded that the facts constituting the state of the art are normally subject to the possibility of rationale disagreement among reasonable men and are not amenable to the taking of judicial notice. See *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973). The Examiner is also reminded that claims are analyzed in the context of the combination of the various separately stated limitations of the claimed invention as a whole, and not with respect to the limitations individually. MPEP 2141.02I (8th ed., rev. 3) MPEP 2144.03A gives examples of limitations which are considered well known, such as when new audio information is recorded then the old information is erased, or when a heat requirement is varied it is well known to vary a flame. The MPEP states that Official Notice is proper when the *teachings are readily verifiable* (e.g., use of a control in bacteriology). MPEP 2144.03B (8th ed., rev. 3). MPEP 2144.03A and 2144.04E make clear that *Official Notice is proper with respect to facts which are of notorious character and serve only to fill in the gaps in an insubstantial manner*. Appellants respectfully submit the Office has inappropriately disregarded the combination of limitations of the claims and improperly focused upon the limitations taken individually. The question under 35 U.S.C. §103 is not whether the differences between the prior art and the claims would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. vs. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871, 877 (Fed. Cir. 1983) M.P.E.P. §2141.02 (8th ed. Rev.3). Any reliance upon judicial notice is improper and the combined teachings of the prior art fail to teach or suggest the plural transmit antenna and receive antenna limitations of the claim.

Appellant respectfully submits the Office has failed to establish a proper *prima facie* 103 rejection and Appellants request withdrawal of the 103 rejection and allowance of the claims for the reasons herein as well as the reasons in the Brief of Appellants.

G. The 103 Rejection of Claims 102-103 Over Walton, Drabeck and Sawada.

Appellant respectfully submits there is insufficient motivation to combine the teachings of Sawada to establish a *prima facie* 103 rejection as stated in Section D of this Reply Brief and the Brief of Appellants. Appellant submits that limitations of the claims are not disclosed even if the teachings of the reference are combined and any reliance upon inherency is improper for the reasons set forth in Section D of this Reply Brief.

Initially, the combined teachings of the prior art fail to disclose or suggest the substrate and encapsulant, or that such comprise different materials. With respect to inherency, the Office alleges on page 17 that the substrate needs to remain rigid where as encapsulant needs to be formed around it and this implies the encapsulant and substrate encapsulate an entirety of the communication circuitry and antenna. Limitations of the claims are not disclosed by the prior art as evident from the Examiner's argument at page 17 of the Examiner's Answer. However, "implication" even if present, is improper for reliance upon inherency where the above-recited authority requires that the alleged inherent limitations necessarily flow from the teachings of the prior art. Other suitable alternative exist as set forth above in Section D apart from the claimed limitations rendering the reliance upon inherency improper.

Furthermore, with respect to claim 102, Fig. 6 of Walton illustrates the outwardly exposed *antenna rod 216* which is not entirely encapsulated as claimed. The combination proposed by the Office would modify the explicit teachings of Walton at Fig. 6 with no benefit being afforded thereby with possible detriment to the operation of Walton by encapsulating the exposed antenna. Appellants respectfully submit that the Office has failed to establish that the claimed limitations necessarily flow from the teachings of the prior art and accordingly any reliance upon inherency is improper. Furthermore, since the limitations of the claims are not disclosed by the prior art (even if the references are combined) and there is no inherency, the Office has failed to establish a proper *prima facie* 103 rejection of the claims.

Appellant also respectfully submit that col. 2, lines 18-29 of Sawada teaching encapsulation of a *semiconductor chip* fails to disclose the limitations of claim 102 reciting encapsulation of an *entirety of the communication circuitry and the antenna* of the wireless communication device. Furthermore, such modification is contrary to the explicit Walton teachings of Fig. 6 of the outwardly exposed antenna rod 216.

Appellant respectfully submits the Office has failed to establish a proper *prima facie* 103 rejection inasmuch as limitations are not disclosed nor suggested by the prior art. Appellants request withdrawal of the 103 rejection and allowance of the claims for the reasons herein as well as the reasons in the Brief of Appellants.

H. The 103 Rejection of Claim 104 Over Walton, Drabeck and Sawada.

Positively recited limitations of claim 104 including the *substrate and encapsulant forming a solid mass substantially free of void space* are not disclosed by the prior art references taken individually nor in combination. Furthermore, the limitations have not been demonstrated to be recognized by one of skill in communication circuit art as baldly alleged on page 18 of the Examiner's Answer. The Examiner alleges that one skilled in the communication circuit art recognizes after cooling a solid mass substantially free of void space is provided by compacting and molding electronic device with reference to teachings of Sawada. Initially, Sawada refers to semiconductor chips and not communication circuit arts as alleged on page 18 of the Examiner's Answer. The teachings relied upon by the Examiner including col. 2, lines 18-29 of Sawada merely disclose completely coating a semiconductor chip and fail to mention a substrate and encapsulant forming a solid mass substantially free of any void space as claimed. Furthermore, the semiconductor chip encapsulation of Col. 7, lines 7-16 of Sawada also recited by the Office fails to mention the claimed solid mass substantially free of any void space. Appellants respectfully submit that it has not been demonstrated that one skilled in the art would recognize that the claimed limitations result from the teachings of Sawada especially when Sawada is void of any reference to a solid mass substantially free of void space.

None of the references teach a wireless communication device comprising a *substrate and encapsulant forming a solid mass substantially free of any void space* as claimed. The limitations of claim 104 are not taught by the references even if the

numerous three references are combined. Further, the limitations have not been demonstrated to be well known or inherent from the teachings of the prior art.

Appellant respectfully submits limitations of claim 104 are not taught by the prior art and the Office has failed to establish a proper *prima facie* 103 rejection. Appellant requests withdrawal of the 103 rejection and allowance of the claims for the reasons herein as well as the reasons in the Brief of Appellants.

I. The 102 Rejection of claims 59, 61, 76 and 78.

Appellant respectfully submits the teachings relied upon by the Office in the Examiner's Answer are the same as the teachings relied upon in the Office Action and the anticipation rejection is improper for the reasons set forth in the Brief.

J. PTO-1449

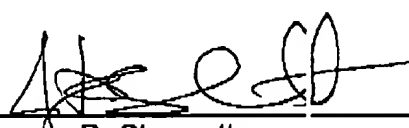
Appellant appreciates the mailing of the initialed Form PTO-1449 to Appellant.

K. Conclusion

Reversal of the rejections of the claims and allowance of the claims is respectfully requested for at least the reasons discussed herein and the reasons set forth in the Brief of Appellant.

Respectfully submitted,

Dated: 6/13/06

By: 
James D. Shaurette
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